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ORIGINAL

February 3, 2003

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED

FEB - 3 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: *Written Ex Parte*
MB Docket No. MB 00-277 and MM Docket Nos. 01-235, 01-317 and 0-244
2002 Biennial Regulatory Review of the Commission's Broadcast Ownership
Rules and Other Rules

Dear Ms. Dortch:

Cox Enterprises, Inc. and its subsidiaries ("Cox") respectfully submit this letter to provide further information in response to questions raised by Commission staff in recent meetings discussing Cox's comments in the above-referenced proceeding.

First, Cox was asked whether the affiliation agreements between its local television stations and the major television networks include financial (or other) penalties if the stations preempt network programming. Attachment **A** describes the penalty provisions that are triggered if Cox stations exceed certain levels of preemption set forth in the agreements. Although the provisions vary from station to station, preemption penalties are included in every Cox affiliation agreement, regardless of the network involved. **As** the information in the chart demonstrates, the penalties include reduced compensation, reimbursement of lost revenues to the network, and termination of the affiliation agreement. Each of the penalties serves as a strong deterrent to the Cox station to carry other, non-network programming.

Second, Cox was asked to respond to network assertions that they always offer a "cash alternative" in retransmission consent negotiations with cable operators and that, therefore, any decision to carry network-owned cable programming at increased rates is a decision freely made by the cable operator that could have been avoided by paying cash for the networks' owned and operated stations ("O&Os"). Cox has been unable to find a written description of this argument in the record in this proceeding and thus does not know what, if any, documentation or other factual evidence the networks are relying upon to support these claims. Nonetheless, Cox is attaching hereto a declaration from Robert Wilson, Vice President of Programming for Cox Communications, Inc., which demonstrates that none of the networks involved in the retransmission consent negotiations described in detail in Cox's opening comments made Cox a cash offer for carriage of its O&Os. Rather, in each instance, the network insisted that Cox carry

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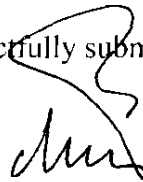
affiliated cable programming owned by the network -- a practice that has led directly to increased cable rates and decreased customer choice in Cox's cable markets.

Moreover, the networks' argument that offering a "cash alternative" for carriage of their O&Os solves the retransmission consent problems described in Cox's comments completely misses the point. **As** Cox stated in its comments, the networks bargain over retransmission consent for all of their O&Os nationwide in a single negotiation -- a strategy that is designed to maximize their leverage over cable operators (such as Cox) who serve customers in multiple markets also served by O&Os. Should the networks switch to a tactic of demanding inflated cash compensation for carriage of their free over-the-air stations (in lieu of carriage of the networks' non-broadcast programming), cable consumers would still be adversely affected: programming costs, and consumers' cable rates, would continue to **rise** rapidly. The inflationary impact on programming costs and the reduction of consumer choice that Cox's cable customers are experiencing today are the direct result of the substantial leverage accorded to the networks through their national television station footprint. Retransmission consent is not the problem. The networks' ability and practice of misusing retransmission consent negotiations by leveraging their ownership of numerous stations in many of the country's largest television markets is the problem. And, the problem will be greatly exacerbated should the networks be permitted to expand their television station footprint even further.

We hope that the foregoing information will facilitate the Commission's analysis. Please do not hesitate to contact us if we can provide you with additional information.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter are being submitted to the Secretary's office for the above-captioned docket and copies are being provided to the Commission personnel listed below. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



Alexander V. Netchvolodoff

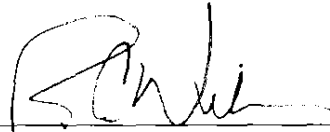
cc: Susan Eid, Esq.
Catherine Bohigian, Esq.
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Network	Cap	Preemption Penalty
<u>ABC</u> WSB – Atlanta WSOC – Charlotte WFTV – Orlando	Yes – 37.5 prime hours	<p>If a station preempts a network program and the network claims that the preemption was not in accord with the FCC's Right to Reject rule, the network can pull the station's right to air future episodes of that program's series. If a station preempts three or more episodes of a series for any reason within a thirteen-week period (regardless of the Right to Reject rule), the network can pull the series.</p> <p>Station compensation is reduced for each program preempted, and if preemptions exceed the cap, additional financial penalties are added. For example, ABC (like NBC) is currently proposing that affiliates reimburse network in cash for preemptions beyond a preemption cap.</p>
<u>CBS</u> KIRO – Seattle WHIO – Dayton	Yes – KIRO: 20 prime hours, 15% of sports; WHIO: 25-41 hours	If the cap is exceeded, CBS can reduce annual net compensation by 25%. Annual financial penalties can exceed \$1 million
KTVU – San Francisco KFOX – El Paso KRXI – Reno	Yes. Preapproved preemptions negotiated and attached to 10-year affiliation agreement. Stations limited to 3 "unauthorized" preemptions every 12 months and 72 hours notice required.	If a station has four or more unauthorized preemptions (i.e., ones not approved by Fox), Fox can elect to terminate the station's right to broadcast any one or more series or other Fox programs or Fox can terminate the affiliation agreement. (Network cannot cut compensation because Fox affiliates do not receive network conip.)
<u>NBC</u> WPXI – Pittsburgh WTOV – Steubenville, OH WJAC – Johnstown, PA	No specific cap for WPXI WJAC – 30 hours in prime WTOV – 20 hours in prime	<p>Current WPXI agreement calls for NBC to make an incentive payment to the station based upon the number of hours preempted. The payment grid ranges from 0 hours preempted to 35 hours preempted. A mere 30 minutes of prime time preemptions per week would result in a penalty exceeding \$1 million.</p> <p>WTOV & WJAC agreement requires that the stations not only forfeit compensation attributable to a preempted program but also reimburse NBC for loss of net advertising revenue due to preemption. Stations must give 3 weeks notice of planned preemption (except in case of breaking news).</p>

Declaration of Robert Wilson

1. My name is Robert Wilson. I am Vice President of Programming for Cox Communications, Inc. ("Cox Communications"), a position I have held since 1997. Prior to 1997, I was employed by **Cox** Communications as an Assistant Business Manager and later as a Director of Operations, Finance and Administration, **and** Director of Programming. I have been with Cox Communications and its predecessors for over 21 years.
2. My responsibilities include general oversight **of** all the Cox Communications cable programming agreements with content providers, including national television broadcast network owned and operated station groups and cable networks.
3. Through my position at Cox Communications, I am familiar with and have personal knowledge of the negotiations resulting in Cox Communications' cable programming agreements. These include retransmission consent negotiations with local broadcasters and national broadcast networks, as well as carriage negotiations with vertically integrated and independent cable networks. I also have personal knowledge of certain practices particularly associated with the major national broadcast networks including their attempts to tie carriage of affiliated cable networks to retransmission consent agreements involving their owned and operated broadcast stations.
4. I submitted a signed declaration verifying the factual statements made in the "Comments of Cox Enterprises, Inc.," filed in the Federal Communications Commission's docket on the 2002 biennial review of the broadcast rules, concerning Cox Communications retransmission consent negotiations and agreements. To the best **of** my knowledge and belief, none of the networks involved in the retransmission consent negotiations described in Cox's opening comments made Cox a cash offer for carriage of its owned-and-operated television stations. Rather, the networks insisted that Cox carry affiliated cable programming owned by the networks.

I declare under penalty of perjury that the foregoing is true and correct



Robert Wilson
Vice President of Programming
Cox Communications, Inc.

Executed on January 31, 2003